

Guido Saveri (22349)
guido@saveri.com
R. Alexander Saveri (173102)
rick@saveri.com
Geoffrey C. Rushing (126910)
grushing@saveri.com
Cadio Zirpoli (179108)
cadio@saveri.com
Matthew D. Heaphy (227224)
mheaphy@saveri.com
SAVERI & SAVERI, INC.
706 Sansome Street
San Francisco, CA 94111
Telephone: (415) 217-6810
Facsimile: (415) 217-6813

Lead Counsel for Direct Purchaser Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Master File No. 07-CV-5944-JST

MDL No. 1917

This Document Relates to:

ALL DIRECT PURCHASER ACTIONS

**DECLARATION OF DAVID Y. HWU IN
SUPPORT OF DIRECT PURCHASER
PLAINTIFFS' OBJECTIONS TO NEW
EVIDENCE IN THE IRICO DEFENDANTS'
REPLY IN SUPPORT OF THEIR MOTIONS
TO DISMISS CLAIMS OF DIRECT
PURCHASER PLAINTIFFS FOR LACK OF
SUBJECT MATTER JURISDICTION
(ECF No. 5463)**

Date: May 30, 2019

Time: 2:00 p.m.

Judge: Honorable Jon S. Tigar

Courtroom: 9

1 I, David Y. Hwu, declare:

2 1. I am an attorney at Saveri & Saveri, Inc., Lead Counsel for Direct Purchaser
3 Plaintiffs (“DPPs”) in this action. I am a member of the Bar of the State of California and admitted
4 to practice in the Northern District of California. I am fluent in Mandarin Chinese. I have been
5 involved in many aspects of this case since 2011. I make this Declaration in Support of DPPs’
6 Objections to New Evidence in the Irico Defendants’ Reply in Support of Their Motions to
7 Dismiss Claims of Direct Purchaser Plaintiffs for Lack of Subject Matter Jurisdiction (ECF No.
8 5463). Except as otherwise stated, I have personal knowledge of the facts stated below.

9 2. I reviewed Exhibit B to the Declaration of Stuart C. Plunkett in Support of Irico
10 Defendants’ Reply in Support of Irico Defendants’ Motions to Dismiss Claims of Direct Purchaser
11 Plaintiffs for Lack of Subject Matter Jurisdiction (ECF No. 5463-3), and thereafter visited the
12 website from which it was purportedly printed. During my examination of the website, I clicked
13 the hyperlink corresponding to the “2013 annual report” and printed the resultant page. Attached
14 hereto as Exhibit A is a true and correct copy of a document entitled 2013 Annual Report that I
15 printed from <http://www.gsxt.gov.cn/> on May 6, 2019, and a certified translation thereof.

16 3. Attached hereto as Exhibit B is a true and correct copy of excerpts of the transcript
17 of the first day of the deposition of Wang Zhaojie on March 6, 2019 (“Wang Dep. Day 1”).

18 4. Attached hereto as Exhibit C is a true and correct copy of excerpts of the transcript
19 of the third day of the deposition of Wang Zhaojie on March 8, 2019 (“Wang Dep. (Day 3)”).

20 5. Attached hereto as Exhibit D is a true and correct copy of excerpts of the transcript
21 of the second day of the deposition of Wang Zhaojie on March 7, 2019 (“Wang Dep. (Day 2)”).

22 6. Attached hereto as Exhibit E is a true and correct copy of excerpts of the transcript
23 of the deposition of Curtis Milhaupt on April 24, 2019.

24 I declare under the penalty of perjury under the laws of the United States of America that
25 the foregoing is true and correct.

26 Executed this 9th day of May, 2019 in San Francisco, California.

27 /s/ David Y. Hwu
28 David Y. Hwu

EXHIBIT A

[首页](#)[企业信息填报](#)[信息公告](#)[使用帮助](#)[导航](#)[登录](#) [注册](#)[企业信用信息](#) | [经营异常名录](#) | [严重违法失信企业名单](#)

请输入企业名称、统一社会信用代码或注册号

2013年度报告

[9条修改记录](#)

填报时间:2015年09月30日

企业年报信息由该企业提供，企业对其年报信息的真实性、合法性负责

基本信息

- 统一社会信用代码/注册号:

91610000220532754N
- 企业名称:

中国电子进出口彩虹公司
- 企业通信地址:

陕西省咸阳市彩虹路一号
- 邮政编码:

712020
- 企业联系电话:

029-33332851
- 企业电子邮箱:

jszxzn@ch.com.cn
- 从业人数:

企业选择不公示
- 企业经营状态:

开业
- 是否有网站或网店:

否
- 有限责任公司本年度是否发生股东股权转让:

否
- 是否有投资信息或购买其他公司股权:

否
- 是否有对外提供担保信息:

否

网站或网店信息

暂无网站或网店信息

股东及出资信息

序号	股东	认缴出资额 (万元)	认缴出资时间	认缴出资方式	实缴出资额 (万元)	实缴出资时间	实缴出资方式
1	彩虹集团公司						

共 查询到 1 条记录 共 1 页

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对外投资信息

企业资产状况信息

资产总额	企业选择不公示	所有者权益合计	企业选择不公示
营业总收入	企业选择不公示	利润总额	企业选择不公示
营业总收入中主营业务收入	企业选择不公示	净利润	企业选择不公示
纳税总额	企业选择不公示	负债总额	企业选择不公示

对外提供保证担保信息

序号	债权人	债务人	主债权种类	主债权数额	履行债务的期限	保证的期间	保证的方式
暂无对外提供保证担保信息							

共 查询到 0 条记录 共 0 页

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股权变更信息

序号	股东	变更前股权比例	变更后股权比例	股权变更日期
暂无股权变更信息				

共 查询到 0 条记录 共 0 页

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修改信息

序号	修改事项	修改前	修改后	修改日期
1	402	15593183600	155.93	2015年9月29日
2	405	-5798219600	-57.98	2015年9月29日
3	408	0	233.78	2015年9月29日
4	407	0	1.72	2015年9月29日
5	406	-5798219600	-57.98	2015年9月29日

共 查询到 9 条记录 共 2 页

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主办单位：国家市场监督管理总局

地址：北京市西城区三里河东路八号 邮政编码：100820 备案号：京ICP备16053442号-1

[业务咨询与技术支持联系方式](#)



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info@certifiedtranslate.com
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2425 Olympic Blvd., Suite 4000W
Santa Monica, CA 90404

usa 1-888-856-2228
int +1-310-684-3153
fax +1-310-564-1944



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ATA Member Number: 248719

CERTIFIED TRANSLATION

Documents Translated For:

Name: David Y. Hwu	Street Address: 706 Sansome Street
Firm: Saveri & Saveri, Inc.	City/State/Zip: San Francisco / CA / 94111

Description of Document(s):

NATIONAL ENTERPRISE CREDIT INFORMATION PUBLICITY RECORD
CNEIECC 2013 ANNUAL REPORT

Source Language: SIMPLIFIED CHINESE	Target Language: ENGLISH
--	---------------------------------

WITH REFERENCE TO THE ABOVE MENTIONED MATERIALS/DOCUMENTS, we at Language Fish LLC (doing business as www.certifiedtranslate.com), a professional document translation company, attest that the language translation completed by Language Fish's certified professional translators, represents, to the best of our judgment, an accurate and correct interpretation of the terminology/content of the source document(s). **This is to certify the correctness of the translation only.** We do not guarantee that the original is a genuine document or that the statements contained in the original document(s) are true.

IN WITNESS WHEREOF, Language Fish LLC has caused the Certificate to be signed by its duly authorized officer(s).

By: **Sean Kirschenstein, Director**

Date: **May 9, 2019**

A copy of the translated version(s) is attached to this statement of certification.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

On May 9, 2019 before me, Kristin Gail Chamberlain, Notary Public, appeared Sean Kirschenstein, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kristin Chamberlain



5/6/2019

National Enterprise Credit Information Publicity System

[Home](#) | [Completion of Enterprise Information](#) | [Information Disclosure](#) | [Help](#) | [Navigation](#) | [Login](#) [Register](#)
[Enterprise Credit Information](#) | [List of Enterprises with Operational Abnormalities](#) | [List of Enterprises with Serious Illegal and Dishonest Acts](#)
 Enter enterprise name and unified social credit code or registration number
2013 Annual Report [9 revision records](#)

Completed September 30, 2015

The information in an enterprise's annual report is provided by that enterprise. The enterprise is responsible for the truthfulness and legality of the information in its annual report.

Basic Information

- **Unified social credit code / Registration number:** 91610000220532754N
- **Enterprise's mailing address:** 1 Caihong Road, Xianyang, Shaanxi
- **Enterprise's phone number:** 029-33332851
- **Number of employees:** Enterprise chose not to disclose
- **Has a website or online store?** No
- **Has investment information or has purchased equity in other companies?** No
- **Enterprise name:** China National Electronics Import and Export Caihong Co.
- **Postal code:** 712020
- **Enterprise's email address:** jszxzn@ch.com.cn
- **Enterprise's operational status:** In operation
- **If a limited liability company, did the company experience any shareholder equity transfers this year?** No
- **Has information on external guarantees provided?** No

Website or Online Store Information

No information currently on websites or online stores

Shareholder and Contribution Information

No.	Shareholder	Subscribed Contribution (10,000 yuan)	Date of Contribution Subscription	Method of Contribution Subscription	Paid-in Contribution (10,000 yuan)	Date of Contribution Pay-in	Method of Contribution Pay-in
1	IRICO Group Corporation						

1 record found in total 1 page in total

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Foreign Investment Information

Information on Enterprise's Asset Status

Total Assets	Enterprise chose not to disclose	Owner's Total Equity	Enterprise chose not to disclose
Total Operating Revenue	Enterprise chose not to disclose	Total Profit	Enterprise chose not to disclose

5/6/2019

National Enterprise Credit Information Publicity System

Primary Operating Revenue Within Total Operating Revenue	Enterprise chose not to disclose	Net Profit	Enterprise chose not to disclose
Total Tax	Enterprise chose not to disclose	Total Liabilities	Enterprise chose not to disclose

Information on External Sureties and Guarantees Provided

No.	Creditor	Debtor	Principal Debt Obligation Type	Principal Debt Obligation Amount	Term of Performance of Debt Obligation	Term of Guarantee	Method of Guarantee
No information currently on external sureties and guarantees provided							

0 record found in total 0 page in total

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Information on Equity Changes

No.	Shareholder	Equity Ratio Before Change	Equity Ratio After Change	Date of Equity Change
No information currently on equity changes				

0 record found in total 0 page in total

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Revision Information

No.	Item Revised	Before Revision	After Revision	Revision Date
1	402	15593183600	155.93	September 29, 2015
2	405	-5798219600	-57.98	September 29, 2015
3	408	0	233.78	September 29, 2015
4	407	0	1.72	September 29, 2015
5	406	-5798219600	-57.98	September 29, 2015

9 records found in total 2 pages in total

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Address: 8 Sanlihe Donglu, Xicheng District, Beijing Postal code: 100820 Recordation number: Jing ICP Bei Number 16053442-1

[Contact information for business consulting and technical support](#)

EXHIBIT B

March 06, 2019

1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

IN RE:)
)
CATHODE RAY TUBE (CRT)) Master File No.
ANTITRUST LITIGATION) 07-CV-5944-JST
)
) MDL No. 1917
)
)
)

DEPOSITION OF WANG ZHAOJIE

HIGHLY CONFIDENTIAL

VOLUME I

Wednesday, March 6th, 2019

AT: 9.08 am

Taken at:

Kobre & Kim
6/F ICBC Tower
3 Garden Road
Central
Hong Kong

Court Reporter:

Bron Williams
Accredited Real-time Reporter

1 VIDEOGRAPHER: We are back on the record. Here
2 begins media number 3 in the deposition of Wang Zhaojie.
3 The time is 10.25.

4 BY MR. BENZ:

5 Q. Mr. Wang, when did you begin to prepare for
6 your deposition here today?

7 A. A couple of days ago.

8 Q. Did you look at any documents prior to
9 testifying today to prepare for your deposition?

10 A. I have read all the documents provided by my
11 counsel.

12 Q. Which documents -- can you describe the
13 documents you reviewed?

14 A. It is difficult for me to describe. Can you
15 show me the documents?

16 Q. I cannot show you any documents. I'm just
17 asking to you describe the documents that you reviewed.

18 A. The documents provided by my counsel.

19 Q. Mr. Wang, when were you notified that you
20 would be testifying on behalf of Irigo Group and Irigo
21 Display?

22 A. A while ago.

23 Q. Can you be more specific?

24 A. I cannot remember exact date.

25 Q. Can you tell me how many days you spent

1 preparing for this deposition?

2 A. Three days.

3 Q. I know you said you can't remember the exact
4 date, but can you approximate how many weeks or months you
5 had been informed that you would be testifying for Irico
6 Group and Irico Display?

7 A. Could you repeat your question one more time?

8 MS. FU: I would like the interpreter to just
9 translate the question.

10 INTERPRETER: Okay, so I just repeat the question.
11 (Chinese spoken).

12 A. Roughly at several weeks ago.

13 BY MR. BENZ:

14 Q. Have you spoken to Zhang Wenkai about his
15 deposition?

16 A. (Chinese spoken).

17 INTERPRETER: The witness is asking the
18 interpreter to repeat the question.

19 (Chinese spoken).

20 A. I don't understand this question.

21 BY MR. BENZ:

22 Q. Have you spoken to Mr. Zhang recently?

23 A. (Chinese spoken).

24 INTERPRETER: (Chinese spoken).

25 A. Yes. Yes.

March 06, 2019

29

1 BY MR. BENZ:

2 Q. When did you speak with Mr. Zhang?

3 A. A couple of days ago.

4 Q. Did you discuss Mr. Zhang's deposition with
5 him?

6 A. No.

7 Q. What did you discuss with Mr. Zhang?

8 MR. PLUNKETT: Objection, this potentially calls
9 for privileged information. I would ask the witness not to
10 divulge communications with Mr. Zhang in the presence of
11 counsel -- that occurred in the presence of counsel.

12 A. We talk about the food we eat every day.

13 BY MR. BENZ:

14 Q. Anything else?

15 A. No.

16 Q. Did you review Mr. Zhang's -- sorry, strike
17 that.

18 Did you have any discussions with Mr. Guo
19 recently?

20 A. No.

21 Q. You understand that you are covering several
22 deposition topics that were originally assigned to Mr. Guo,
23 correct?

24 A. Yes, I do understand.

25 Q. You understand that Mr. Guo is ill?

March 06, 2019

115

1 CERTIFICATE OF COURT REPORTER

2
3 I, Bron Williams, an Accredited Real-time Reporter, hereby
4 certify that the testimony of the witness Wang Zhaojie in
5 the foregoing transcript, numbered pages 1 through 115,
6 taken on this 6th day of March, 2019 was recorded by me in
7 machine shorthand and was thereafter transcribed by me; and
8 that the foregoing transcript is a true and accurate
9 verbatim record of the said testimony.

10
11
12 I further certify that I am not a relative, employee,
13 counsel or financially involved with any of the parties to
14 the within cause, nor am I an employee or relative of any
15 counsel for the parties, nor am I in any way interested in
16 the outcome of the within cause.

17
18
19 Signed: *Bron Williams*

20 Name: Bron Williams

21 Date:

EXHIBIT C

March 08, 2019

1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

IN RE:)
)
CATHODE RAY TUBE (CRT)) Master File No.
ANTITRUST LITIGATION) 07-CV-5944-JST
)
) MDL No. 1917
)
)
)

DEPOSITION OF WANG ZHAOJIE

HIGHLY CONFIDENTIAL

VOLUME III

Friday, March 8th, 2019

AT: 9.05 am

Taken at:

Kobre & Kim
6/F ICBC Tower
3 Garden Road
Central
Hong Kong

Court Reporter:

Bron Williams
Accredited Real-time Reporter

1 MS. CAPURRO: Let's go off the record for
2 a minute.

3 VIDEOGRAPHER: This marks the end of media 1 in
4 the deposition of Wang Zhaojie, volume III. The time
5 is 9.17.

6 (Break taken.)

7 VIDEOGRAPHER: We are back on the record. Here
8 marks the beginning of media number 2 in the deposition of
9 Wang Zhaojie, volume III. The time is 9.28.

10 BY MS. CAPURRO:

11 Q. Mr. Wang, are you prepared to testify
12 regarding topic number 14?

13 A. Yes.

14 Q. What did you do to prepare for topics number
15 11 and 14?

16 MR. PLUNKETT: Object to the form.

17 A. First of all, I work in the sales department
18 for many, many long times. Secondly, we try very hard to
19 identify relevant evidence and informations.

20 BY MS. CAPURRO:

21 Q. Did you review any documents to prepare for
22 these deposition topics?

23 MR. PLUNKETT: Object to the form.

24 A. To prepare those topics, I reviewed the
25 relevant documents provided by our counsel.

March 08, 2019

12

1 BY MS. CAPURRO:

2 Q. So you didn't go and review any of Irico's
3 files yourself to see if you could find relevant documents?

4 MR. PLUNKETT: Object to the form. Argumentative.
5 Object on the basis of vagueness as to time.

6 BY MS. CAPURRO:

7 Q. Let me rephrase.

8 Mr. Wang, in preparing --

9 A. (Chinese spoken).

10 Q. -- to testify at this deposition, did you only
11 review documents provided by your counsel?

12 A. Basically those are the documents I have
13 reviewed. I also reviewed other relevant information.

14 Q. What other relevant information did you
15 review?

16 A. There is too much of it, I don't remember.

17 Q. You can't give me any examples of the relevant
18 information that you reviewed?

19 A. I don't remember clearly.

20 Q. Throughout your career at Irico have you ever
21 reviewed any annual reports produced by Irico Group, or
22 Irico Display or Irico Electronics?

23 A. I don't remember clearly.

24 Q. In May 2010, you were transferred to work for
25 Irico Electronics, correct?

March 08, 2019

13

1 A. (Chinese spoken).

2 INTERPRETER: The witness is asking to repeat the
3 question.

4 (Chinese spoken).

5 MS. FU: Correction. (Chinese spoken).

6 INTERPRETER: Yes.

7 A. Yes.

8 BY MS. CAPURRO:

9 Q. First, as deputy general manager, and then as
10 general manager of sales, correct?

11 MS. FU: I would like to make a correction.
12 (Chinese spoken).

13 A. (Chinese spoken).

14 INTERPRETER: (Chinese spoken).

15 BY MS. CAPURRO:

16 Q. Mr. Wang, response please?

17 A. Your question is not very clear.

18 Q. What was your position at Irigo Electronics in
19 May 2010?

20 A. Deputy general manager at the sales
21 department, Irigo Group Electronics.

22 Q. And then you were promoted to general manager
23 of sales, correct?

24 A. That's correct.

25 Q. Are you familiar with Irigo Electronics annual

1 BY MS. CAPURRO:

2 Q. So in 2004, Irico knew that various CRT
3 manufacturers and television manufacturers had closed or
4 were about to close their facilities in America, correct?

5 MR. PLUNKETT: Object to the form. That question
6 is vague because you are using the term -- your question is
7 inherently confusing because you are using the term "Irico"
8 and referring to a document that is from Electronics --
9 I assume you don't intend to be confusing in this way.

10 But that's the problem when you are asking
11 questions that are beyond the scope and mischaracterizing
12 the document.

13 MS. CAPURRO: Can we go off the record for
14 a second.

15 VIDEOGRAPHER: This marks the end of media number
16 2 in the deposition of Wang Zhaojie, volume III. Going off
17 the record. The time is 10.15.

18 (Break taken.)

19 VIDEOGRAPHER: We are back on the record. Here
20 begins media number 3 in the deposition of Wang Zhaojie,
21 volume III. The time is 10.34.

22 BY MS. CAPURRO:

23 Q. Mr. Wang, we are going to switch topics. I'm
24 going to ask you some questions about topic 3 in the
25 deposition notice.

March 08, 2019

28

1 I'll read topic 3 to you and the translator will
2 translate.

3 "The inter-defendant Communications identified in
4 Exhibit 11 to the Saveri Declaration or in the Leitzinger
5 Report involving Irico, including any internal
6 Communications on or about the same dates."

7 Do you understand that topic 3 is about
8 communications between different defendants in this lawsuit?

9 A. I know.

10 Q. Are you prepared to testify about topic 3 on
11 behalf of Irico Group and Irico Display?

12 A. Yes, I know.

13 Q. What did you do to prepare to testify about
14 this topic?

15 A. I worked for Irico for many years. I also
16 reviewed relevant information. Relevant documents.

17 Q. What documents did you review?

18 A. The document provided by the counsel.

19 Q. Did you provide any -- strike that. Did you
20 review any other documents other than the documents that
21 were provided by your counsel?

22 A. I don't remember.

23 Q. When did you begin preparing for -- to testify
24 regarding topic 3?

25 MR. PLUNKETT: Object to the form.

March 08, 2019

29

1 A. A while ago.

2 BY MS. CAPURRO:

3 Q. Can you be more precise, please?

4 A. I don't remember exact time.

5 Q. Would you say within the last 30 days?

6 A. That's about it. Around that date. I don't
7 remember the exact date.

8 Q. Can you please give me your best recollection
9 of what other documents you reviewed, other than the ones
10 provided by your counsel?

11 A. I don't remember exactly.

12 Q. Can you remember one?

13 A. I don't remember clearly.

14 Q. Have these documents been produced in this
15 litigation? To plaintiffs?

16 MR. PLUNKETT: Object to the form.

17 A. I don't remember exactly.

18 BY MS. CAPURRO:

19 Q. During your time working in the sales
20 department of Irico Group, did you ever travel for work?

21 A. Yes.

22 Q. Did Irico employees need permission to travel
23 for work?

24 MR. PLUNKETT: Object to the form.

25

March 08, 2019

114

1 CERTIFICATE OF COURT REPORTER

2
3 I, Bron Williams, an Accredited Real-time Reporter, hereby
4 certify that the testimony of the witness Wang Zhaojie in
5 the foregoing transcript, numbered pages 1 through 115,
6 taken on this 8th day of March, 2018 was recorded by me in
7 machine shorthand and was thereafter transcribed by me; and
8 that the foregoing transcript is a true and accurate
9 verbatim record of the said testimony.

10
11
12 I further certify that I am not a relative, employee,
13 counsel or financially involved with any of the parties to
14 the within cause, nor am I an employee or relative of any
15 counsel for the parties, nor am I in any way interested in
16 the outcome of the within cause.

17
18
19 Signed: *Bron Williams*

20 Name: Bron Williams

21 Date:

EXHIBIT D

March 07, 2019

1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

IN RE:)
)
CATHODE RAY TUBE (CRT)) Master File No.
ANTITRUST LITIGATION) 07-CV-5944-JST
)
) MDL No. 1917
)
)
)

DEPOSITION OF WANG ZHAOJIE

HIGHLY CONFIDENTIAL

VOLUME II

Thursday, March 7th, 2019

AT: 9.02 am

Taken at:

Kobre & Kim
6/F ICBC Tower
3 Garden Road
Central
Hong Kong

Court Reporter:

Bron Williams
Accredited Real-time Reporter

1 A. About a couple of weeks ago.

2 Q. Did you speak with Mr. Guo to prepare for your
3 testimony here today? At any time?

4 MR. PLUNKETT: Object to the form.

5 BY MR. BENZ:

6 Q. Mr. Wang, there is a question pending, unless
7 your counsel --

8 A. First of all, I worked for this company for
9 many, many years, and in the sales department, where Mr. Guo
10 was my supervisor. I also reviewed his declaration.

11 BY MR. BENZ:

12 Q. You did not answer my question, Mr. Wang. My
13 question was: Did you speak with Mr. Guo to prepare for
14 your deposition here today?

15 MR. PLUNKETT: Object to the form.

16 A. Would you please repeat your question?

17 BY MR. BENZ:

18 Q. Did you speak with Mr. Guo to prepare for your
19 deposition?

20 MR. PLUNKETT: Object to the form.

21 MR. BENZ: What is the basis for your objection?
22 It is a simple fact.

23 MR. PLUNKETT: No. The basis for the objection is
24 the confusion you have confusion in asking him whether he
25 spoke to Mr. Guo -- you know, a few days to prepare for

1 this, or if part of his preparation was all the
2 conversations he had with Mr. Guo over the years that he
3 worked with him, which he what he just testified about.
4 I think that's where he is getting confused, that's why I'm
5 objecting to form. I see why you are frustrated, but
6 I think the problem is with your question.

7 MR. BENZ: I think you are also --

8 MR. PLUNKETT: You just asked me to give
9 a narrative. I've been objecting to form. So your
10 frustration is your own.

11 MR. BENZ: My frustration is signaling to the
12 witness that there may be something wrong with the question,
13 therefore he should obstruct his testimony. But anyway, I
14 will move on, I appreciate the explanation.

15 MR. PLUNKETT: That needs to be translated.

16 INTERPRETER: (Chinese spoken).

17 MR. BENZ: Did you also translate my portion of
18 the exchange?

19 INTERPRETER: (Chinese spoken).

20 A. I don't think your question is very specific
21 or very clear.

22 BY MR. BENZ:

23 Q. I'll ask it again. I'll rephrase it. After
24 you learned about this deposition, Mr. Wang, did you speak
25 to Mr. Guo?

1 MR. PLUNKETT: Object to the form.

2 A. I'm not very clear about your questions. As
3 I said, Mr. Guo was my supervisor long time ago. We have
4 regular contact and communication. In the past.

5 BY MR. BENZ:

6 Q. In the past month have you spoken with
7 Mr. Guo?

8 A. Please be more specific.

9 Q. In the past 30 days have you spoken with
10 Mr. Guo?

11 A. Please be specific about the date.

12 MR. PLUNKETT: So I would like to advise the
13 witness that to the extent he is able to understand that
14 counsel is asking him if in the past 30 days he has ever
15 spoken to Mr. Guo for any reason, he should provide that
16 information to counsel.

17 A. I don't remember exactly.

18 MS. FU: I would like to correct that translation.
19 It should be "I don't recall." (Chinese spoken). It is not
20 (Chinese spoken). (Chinese spoken).

21 A. (Chinese spoken).

22 INTERPRETER: The witness said "I don't agree."

23 To clarify, I agree with the check interpreter's
24 comment.

25

1 BY MR. BENZ:

2 Q. So as you sit here today, Mr. Wang, you don't
3 remember one way or the other whether you spoke to Mr. Guo
4 in the last 30 days, correct?

5 A. What I mean is 30 days from today, within this
6 period, I'm not quite sure whether I have conversation with
7 Mr. Guo or not.

8 Q. I want to ask you some questions in your
9 capacity as a representative of Irico Group and Irico
10 Display. I want to start with topic 8.

11 I will read you topic 8 if you could translate.

12 "Any status, obligations, or privileges that Group
13 or Display had under the law of the People's Republic of
14 China during the period from 2006 to 2008."

15 Did you prepare to testify on behalf of Irico
16 Group and Irico Display on this topic?

17 A. Yes, I'm ready.

18 Q. What did you do to prepare for your testimony
19 on topic 8?

20 A. I work for Irico for many years.

21 I also read relevant information and documents.

22 I also try my best to read through the declaration in
23 Mr. Guo.

24 Q. To prepare to testify about this topic did you
25 review any Chinese laws?

1 A. I'm not quite sure you are pointing to.

2 Q. I'm just asking if you reviewed any legal
3 documents.

4 MR. PLUNKETT: Object to the form.

5 MR. BENZ: Okay --

6 A. Please be more specific.

7 BY MR. BENZ:

8 Q. Yes. Did you review any laws promulgated by
9 the People's Congress?

10 A. I'm not clear about your question.

11 Q. Did you review any laws that were issued by
12 the Standing Committee of the People's Congress?

13 INTERPRETER: I would like to clarify the term
14 "People's Congress."

15 (Chinese spoken).

16 A. Your question is not very clear.

17 BY MR. BENZ:

18 Q. Did you review any documents issued by the
19 Chinese government?

20 MR. PLUNKETT: Object to the form.

21 A. Your question is too vague.

22 BY MR. BENZ:

23 Q. Did you review any rules issued by a Chinese
24 government regulator?

25 A. Your question is still very vague.

1 Q. Did you view any laws issued by the Chinese
2 government?

3 A. The question is too vague.

4 Q. Did you review any statutes from the People's
5 Republic of China?

6 A. (Chinese spoken).

7 MS. FU: Correction. (Chinese spoken).

8 A. There are many, many rules issued by the
9 government. So this question is too vague.

10 BY MR. BENZ:

11 Q. Well, Mr. Wang, you testified that you
12 reviewed documents to prepare. Which documents did you
13 review?

14 A. The information in our document.

15 Q. What do you mean by that?

16 A. The document prepared by our counsel.

17 Q. Can you be more specific?

18 A. Would you repeat your question one more time?

19 Q. I will ask a new question. What categories of
20 documents did you review?

21 INTERPRETER:

22 A. (Chinese spoken).

23 INTERPRETER: I want to clarify one term.

24 (Chinese spoken).

25 A. (Chinese spoken).

March 07, 2019

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1 CERTIFICATE OF COURT REPORTER

2
3 I, Bron Williams, an Accredited Real-time Reporter, hereby
4 certify that the testimony of the witness WANG ZHAOJIE in
5 the foregoing transcript, numbered pages 1 through 111,
6 taken on this 7th day of March, 2019 was recorded by me in
7 machine shorthand and was thereafter transcribed by me; and
8 that the foregoing transcript is a true and accurate
9 verbatim record of the said testimony.

10
11
12 I further certify that I am not a relative, employee,
13 counsel or financially involved with any of the parties to
14 the within cause, nor am I an employee or relative of any
15 counsel for the parties, nor am I in any way interested in
16 the outcome of the within cause.

17
18
19 Signed:*Bron Williams*

20 Name: Bron Williams

21 Date:
22
23
24
25

EXHIBIT E

April 24, 2019

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,
CASE NO. 3:07-CV-05944-JST

DEPOSITION OF CURTIS MILHAUPT
San Francisco, California
Wednesday, April 24, 2019

Reported by: Ashley Soevyn, CSR No. 12019
Job No. 796715
Pages 1 - 148

U.S. District Court
April 24, 2019

12

1 A That's correct.

2 Q In both Tokyo and New York?

3 A Correct.

4 Q And during that time, you also worked at
5 the University of Tokyo?

6 A I took a leave of absence from Shearman &
7 Sterling to do an academic fellowship at the
8 University of Tokyo.

9 Q Then following your stint at Shearman
10 Sterling, you became an associated professor at
11 Washington University School of Law?

12 A That's correct.

13 Q And following that, and I'm not going to
14 get into all the details that are on your CV, but
15 just getting the outline, if you will. Following
16 that, you became a professor of law at Columbia; do
17 I have that right?

18 A That's correct.

19 Q And at Columbia, you became the director
20 of the Center of Japanese Legal Studies?

21 A That is correct.

22 Q And when was that?

23 A That was the same time as my appointment
24 to the faculty, so it would have been 1999.

25 Q And you've remained the director until?

1 A Until I left Columbia, which was
2 December 31st, 2017.

3 Q Okay. Looking at your CV, there is a
4 section on page 2 that says, "Research Interests."

5 A Yes.

6 Q Do you see that?

7 A Yes.

8 Q And it says, "East Asian Legal
9 Systems," --

10 A Yes.

11 Q -- "Particularly Japanese and Chinese
12 Law; Comparative Corporate Governance; Corporate
13 Law; State-Owned Enterprises; State Capitalism; Law
14 and Economic Development."

15 Has that been your area of -- of research
16 for your entire career?

17 A No. I would say, initially, about
18 approximately for the first ten years of my academic
19 career, my focus was on Japanese law and comparative
20 corporate governance with a particular focus on
21 Japanese corporate governance, and I became
22 interested in China, approximately 2006. And then
23 developed research interests along the lines -- the
24 additional lines that are stated here, subsequent to
25 that, so over the past approximately decade or so.

1 Q Is it fair to say that taking the entire
2 expanse of your career that the lion's share has
3 been focused on Japan?

4 A I'm not sure I would phrase it that way.
5 As I said early on, certainly that was true. I
6 think that that's not the case over the second half
7 of my career, so I would have a hard time parsing it
8 out into percentages, but I wouldn't say that over
9 the course of my entire career the focus has been on
10 Japan predominantly.

11 Q Turning to China, what subjects would you
12 consider yourself an expert on vis-à-vis China?

13 A Chinese corporate governance in
14 comparative perspective.

15 Q And how did you gain that expertise?

16 A I began with a sabbatical at Tsinghua
17 University in Beijing in the fall of 2006. I began
18 studying Mandarin at that time as well. I began
19 doing research, doing reading, as any academic would
20 to build one's knowledge based interviewing people,
21 knowledgeable people. And then I began serious
22 attempts at scholarship co-authoring my first
23 article with Li-Wen Lin in 2000 -- it was published
24 in 2013, and then subsequent to that, I've had a
25 number of other publications listed in my CV. So

1 it's been an ongoing learning process of research,
2 collaboration, interviews, and study.

3 Q How long did that sabbatical last?

4 A It was the fall of 20 -- fall of 2006.

5 Q So a few months?

6 A Yes.

7 Q Can you spell the name of the university
8 for our court reporter and for myself?

9 A Certainly. Tsinghua. I believe the
10 English spelling is T-S-I-N-G-H-U-A.

11 Q And so your first published scholarship
12 on the subject was in 2013; is that right?

13 A Correct.

14 Q Would you consider yourself an expert on
15 Chinese law?

16 A In general, no.

17 Q And probably the answer to that question
18 presumes the answer to the next, but would you
19 consider yourself an expert on Chinese Criminal Law?

20 A No.

21 Q And you mentioned that you took up
22 Mandarin. Do you speak Chinese?

23 A No. I have some familiarity with the
24 language from my period of study, and I also have
25 some familiarity with Chinese characters because of

1 my study of the Japanese language. The characters
2 are not identical. They have been simplified in
3 Mandarin, but let's say that Chinese is not a
4 completely foreign language to me.

5 Q Right. You had a head start, if you
6 will?

7 A Right. Sadly, I did not pursue it
8 through the fluency.

9 Q Have -- so you don't write Chinese or
10 read written Chinese?

11 A I certainly do not write Chinese. I can
12 make out the subject matter of certain Chinese
13 headlines and the like, but I don't quote/unquote
14 read Chinese, no.

15 Q Have you ever taught a course devoted to
16 Chinese governance or Chinese legal issues?

17 A I teach, as part of my comparative
18 corporate governance course, I do teach a unit on
19 Chinese state-owned enterprises, and state-owned
20 enterprises writ large of which, of course, China is
21 a very important part.

22 Q That's in your course that you teach now
23 that you're a professor at Stanford?

24 A That's correct.

25 Q Okay. And that course, you mentioned is

1 comparative law?

2 A Yes. Let me just supplement what I said.

3 I teach it at Stanford. I also taught a similar

4 section of a course at Columbia when I was still on

5 the faculty there.

6 Q Does is -- what is the title of the

7 class?

8 A Comparative Corporate Law and Governance.

9 Q What countries do you typically cover in

10 that course?

11 A There's some thematic material, so we

12 talk about ownership structures around the world.

13 We talk about investor activism without a particular

14 geographic focus. We talk about, as I said, state

15 on enterprises writ large including Singapore, for

16 example. We also have a country-specific focus on

17 Japan and another on China.

18 Q Have you ever been qualified by a court

19 as an expert witness?

20 A I think I would like clarifying on that

21 because I'm not entirely sure what that means.

22 Q Yeah. What I mean by that is in some

23 sort of court proceeding you've been tendered to the

24 court as an expert in a subject, your

25 qualification's vetted, and the court said, "I

1 accept this person as an expert witness."

2 MR. RUSHING: Objection. Object to the
3 form.

4 MR. HUSTON: You can go ahead and answer.

5 THE WITNESS: Okay. Thank you. To my
6 knowledge, no. I never have received word from a
7 court that that has been the case. I've only been
8 deposed once, and I've received notification from
9 the court to that effect.

10 BY MR. HUSTON:

11 Q And so then my next question is a little
12 broader than that last one. The last one I asked
13 about, you know, whether you've been qualified or
14 accepted by a court as an expert witness. This one
15 is how many times have you been retained to be an
16 expert witness or to be an expert -- let me strike
17 that word "witness."

18 How many times have you been retained to
19 be an expert?

20 A Clarification, in the course of my
21 academic career?

22 Q Yes.

23 A I would estimate about eight times.
24 That's an estimate obviously. In recent years, this
25 case and the drywall case.

1 November 2013, the reforms that were launched by Xi
2 Jinping subsequent to his taking power. So we're
3 talking about a current reform.

4 BY MR. HUSTON:

5 Q If that's what you were talking about,
6 yes.

7 A Yes.

8 Q Okay. The concept of mixed ownership
9 goes back prior to that, correct?

10 A I'm not sure it had that term. I'm not
11 sure the Chinese government used that term, but
12 drawing in private capital into otherwise
13 state-owned enterprises has been a long-standing
14 policy of China, yes.

15 THE REPORTER: 8537.

16 (Exhibit 8537 marked for identification.)

17 BY MR. HUSTON:

18 Q Professor Milhaupt, the court reporter
19 has just handed you what we marked as Exhibit 8537
20 titled, "Governance Challenges of Listed State-Owned
21 Enterprises Around the World: National Experiences
22 and a Framework for Reform."

23 Do you recognize this?

24 A I do.

25 Q This is an article that you co-wrote,

1 correct?

2 A Correct.

3 Q If you look at page 528, please. It's
4 not highlighted, but I will direct your attention to
5 the bottom of the page, and the last paragraph
6 there, there is a sentence towards the end of the
7 page there. It says:

8 "A mixed ownership strategy, bringing
9 more private capital into the state
10 sector, will not transform the role of
11 the state from major participant in the
12 market to an impartial arbiter of
13 market competition. On the contrary,
14 the reforms to date seem primarily
15 intended to create larger SOEs on the
16 theory that global competition requires
17 scale."

18 Can I assume that you agree with that
19 statement?

20 A Yes.

21 Q And does that statement hold true for
22 the -- not just for the most recent changes, but
23 also prior changes to the corporate structure in
24 Japan when private money came into the corporations?

25 MR. RUSHING: Object to the form. I

1 think you made a mistake.

2 THE WITNESS: You said Japan.

3 BY MR. HUSTON:

4 Q Oh, sorry, China.

5 A Would you mind repeating the question?

6 Q Sure. That statement that I just read,
7 does it hold for not just the most recent changes by
8 Xi Jinping, but also prior changes that brought
9 private companies into state-owned enterprises?

10 MR. RUSHING: Object to the form.

11 THE WITNESS: I think it's hard to
12 attribute a single motivation to a reform
13 particularly given the scale of the Chinese economy.
14 As I said earlier, there is no question that drawing
15 in private capital will increase the assets of the
16 SOEs, but there is another motivation which is to
17 subject these firms to greater market discipline and
18 thereby improve their governance. I mean, that
19 would also have the effect of making them better
20 global competitors, I would assume.

21 BY MR. HUSTON:

22 Q If you look at the -- on page 529, the
23 portion that is highlighted there.

24 A Yes.

25 Q It reads:

1 "A Temasek-style structure creating a
2 firewall between the state in its role
3 as investor and the management of its
4 portfolio companies would require the
5 CCP to withdraw from its role in
6 personnel appointments and elimination
7 of the firm-level party committees in
8 favor of depoliticized internal control
9 and reporting structures used in major
10 western firms. Thus far, there is no
11 sign that the party is withdrawing from
12 state-invested firms; to the contrary,
13 the grip of the party seems to be
14 tightening."

15 I assume you agree with that?

16 MR. RUSHING: Object to the form.

17 THE WITNESS: I would want to make
18 certain, though, that we're talking about the
19 present day and the present-day reforms, and the
20 reference to the grip of the party tightening is a
21 reference to the current period under Xi Jinping.

22 BY MR. HUSTON:

23 Q Has -- in the period prior to that -- the
24 current tightening, would you say that the state had
25 significantly less power over state-owned

1 enterprises?

2 MR. RUSHING: Object to the form. Vague

3 as to time.

4 THE WITNESS: There was a period in the

5 Hu Jintao era in which the state was actually more

6 proactively withdrawing from its involvement in the

7 economy, and that seems to have been reversed by

8 Xi Jinping.

9 BY MR. HUSTON:

10 Q In that era that you just mentioned, what

11 years does that correspond with?

12 A Approximately 2002 to 2012. I may be off

13 by a couple years there, but that's the approximate

14 period we're talking about. If I could make --

15 could I make one additional comment?

16 Q Of course, please.

17 A I think it's important to clarify that

18 we're talking here about the communist party, which

19 is not coterminous with the government. I think

20 that's just an important distinction to make because

21 given the nature of the question that we're here to

22 ultimately -- or that the court is ultimately

23 addressing.

24 Q That's a good point. Is it your

25 understanding that the Chinese government is a

1 one-party system?

2 MR. RUSHING: Object to the form.

3 THE WITNESS: Well, the -- I think -- I'm
4 not sure I would use exactly that language. I mean,
5 the government stands apart from the party. There
6 is no question that the Chinese Communist Party has
7 a monopoly on power, but the party is separate from
8 the government.

9 BY MR. HUSTON:

10 Q And in your scholarship, you have used
11 the term "party-state," correct?

12 A Correct.

13 Q And what do you mean by that term?

14 A It's a reference to the fact that the
15 party shadows the state in Leninist fashion.

16 Q And what does that mean?

17 A Well, you have government organizations
18 and then you have parallel party organizations.

19 Q And are those -- tell me how those two
20 things -- strike that.

21 I understand that there is a distinction
22 that can be drawn between the Chinese Communist
23 Party and the government. In reality, however,
24 those two things are very closely intertwined.
25 Would you agree with that?

1 MR. RUSHING: Object to the form.

2 THE WITNESS: I would hesitate to give my
3 own characterization. I'm not a political
4 scientist. The term "party-state" is commonly used
5 as a kind of shorthand for this parallel structure,
6 but I would not hold myself out as having particular
7 expertise in describing or explaining Chinese
8 governments or organizations.

9 BY MR. HUSTON:

10 Q What, in your mind, what is the role of
11 the communist party in China?

12 MR. RUSHING: Object to the form.

13 THE WITNESS: It is a -- I think as I
14 stated earlier, it is a political party with a
15 monopoly on political power in China.

16 BY MR. HUSTON:

17 Q Turn to page 525 of Exhibit 8537. And
18 down at the bottom of the page, there is a sentence
19 that maybe gets at what you're talking about. It
20 says:

21 "SASAC shares decision right on senior
22 management appointments with the
23 Chinese Communist Party (CCP) in a
24 highly institutionalized arrangement
25 whereby the top positions in the most

1 other shareholders held relatively small percentages
2 of the company on an individual basis, yes.

3 BY MR. HUSTON:

4 Q Turn to paragraph 15 of your declaration.

5 It reads:

6 "Irico Display's ownership structure as
7 of 2007 illustrates its status as a
8 mixed-ownership enterprise. As of that
9 year, Irico Group owned 75% of its
10 subsidiary Irico Electronics Group
11 Corporation, a Hong Kong Stock Exchange
12 listed mixed-ownership enterprise.
13 Irico Electronics, in turn, owned
14 41.36% of the shares of Irico Display."

15 Do you see that?

16 A Yes, I do.

17 Q And based on that and based on the
18 testimony that you just gave about no one else
19 having anything close to that 41.36 percent, would
20 you say that if you were to use shareholdings as an
21 indication of control that Irico Electronics
22 controlled Irico Display?

23 MR. RUSHING: Object to the form.

24 Mischaracterizes testimony.

25 THE WITNESS: Well, I think that Irico

1 Electronics would have the ability to elect the
2 board of directors of Irico Display. I hope I said
3 that correctly -- that Irico Electronics with its
4 share ownership would have ability under corporate
5 law principles to elect the board of Irico Display.

6 BY MR. HUSTON:

7 Q So having read some of your articles and
8 other articles -- strike that.

9 Is it fair to say that the concept of
10 control in state-owned and state-controlled
11 enterprises in China works very differently than it
12 works in the United States?

13 MR. RUSHING: Object to the form.

14 THE WITNESS: I think I would appreciate
15 you rephrasing the question. I'm not entirely sure
16 what you're asking me.

17 BY MR. HUSTON:

18 Q So let me get at it this way.

19 We've just been talking about percentage
20 of share ownership, which you and I and everyone
21 around this table kind of understands how that works
22 in the United States, and I guess the gist of my
23 question is how is it different in China as far as
24 the concept of control vis-à-vis share ownership?

25 MR. RUSHING: Object to the form.

1 THE WITNESS: Well, if we can stick to
2 this example. There is nothing unusual in a
3 41 percent shareholder being able to essentially
4 dominate -- dictate the board of directors of its
5 subsidiary. So that's a form -- obviously, a form
6 of corporate control. I don't see that as being
7 different in the United States and in China or
8 anywhere else. Those are standard corporate law
9 principles obviously.

10 BY MR. HUSTON:

11 Q Is it your -- let me ask it this way.

12 Is it fair to say that in China the
13 concept of control of a state-owned enterprise or a
14 state-controlled enterprise has a political
15 component to it?

16 MR. RUSHING: Object to the form.

17 THE WITNESS: In the way that you've
18 asked it, I would have to answer no. Because we're
19 talking about corporations here, and, again, as a
20 comparative corporate law scholar, when one talks
21 about control in terms of share ownership, we're
22 talking about kind of standard corporate control. I
23 mean, these are state-owned enterprises, so yes, you
24 would -- you may think of the government in
25 connection with this, but the concept of control

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1 here is very straightforward and it's universal
2 under corporate law principles.

3 BY MR. HUSTON:

4 Q And how does the Chinese Communist Party
5 fit into that system, if at all?

6 MR. RUSHING: Object to the form.

7 THE WITNESS: Well, the party has --
8 well, let me back up. Let me start with the company
9 law. So the company law recognizes communist party
10 organs, and it appears, anyway, to require
11 corporations to establish communist party organs
12 within the firm. So that's a distinctive feature of
13 Chinese corporate governance, to be sure.

14 BY MR. HUSTON:

15 Q And in reality not just how it's written
16 in the company law, how does the, if you know, how
17 does the Chinese Communist Party exert its will when
18 it comes to corporate governance?

19 MR. RUSHING: Object to the form. And
20 for the record, I'm just saying object to form. I'm
21 happy to explain my objections in greater detail if
22 you'd want them. Because I --

23 MR. HUSTON: I'll certainly ask you.

24 MR. RUSHING: I have a number of problems
25 with that question, but if you want me to, I'm happy

1 to, but I just want to --

2 MR. HUSTON: I appreciate it.

3 MR. RUSHING: I'm not saying vague, I'm
4 not saying compound, I'm not saying argumentative,
5 et cetera. Okay?

6 MR. HUSTON: Yeah, I understand.

7 THE WITNESS: Sorry, would you mind
8 repeating the question?

9 BY MR. HUSTON:

10 Q Sure. The question was in reality and
11 not just how it's written in the company law, how
12 does the Chinese Communist Party exert its will when
13 it comes to corporate governance in state-owned
14 enterprises or state-controlled enterprises?

15 MR. RUSHING: Object to the form.

16 MR. HUSTON: And if you don't know, by
17 all means, you can say that.

18 THE WITNESS: Well, I would say, first of
19 all, this is a subject about which it is difficult
20 to get a lot of information. But the general
21 understanding and my general understanding is that
22 the party participates in personnel decision-making
23 particularly at the level of SASAC. Whether the
24 committees, whether the party performs a role, other
25 than that, even downstream subsidiaries, really, I

1 think depends on the particular company that we're
2 talking about. I've heard a range of things from
3 involved to not involved at all.

4 BY MR. HUSTON:

5 Q And do you have a sense of how involved
6 they are in the Irico Group?

7 A I can only go by what is in the record.
8 I was struck by the absence of, really, much
9 discussion at all of the party in the Irico Group.

10 Q And did you -- you indicated in your
11 declaration that you reviewed the declaration of
12 Mr. Wong?

13 A I did.

14 Q And did you credit it or do you discount
15 it with respect to his comments about the party's
16 influence on corporate governance in the Irico
17 Group?

18 MR. RUSHING: Object to the form.

19 THE WITNESS: That's not how I read his
20 statement. I didn't read his statement as really
21 making any comments on the role of the communist
22 party in corporate governance. I mean, it would be
23 helpful if I could refer to his statement. But I
24 did not read his statement as indicating involvement
25 in corporate governance. At least, it's a flat

1 statement. He offered no examples of any kind of
2 what he's talking about, so it's very hard to
3 evaluate.

4 BY MR. HUSTON:

5 Q I can show you that declaration, and I
6 will in a moment, but let me switch gears and ask.
7 I was just asking you some questions about the
8 communist party. I would like to ask you about
9 SASAC. What is SASAC?

10 A SASAC is an agency directly under the
11 state counsel that acts formally as an investor in
12 the state-owned assets.

13 Q And what influence -- or, strike that.

14 Generally, what is SASAC's role in
15 corporate governance of state-owned enterprises or
16 state-controlled enterprises?

17 MR. RUSHING: Object to the form.

18 THE WITNESS: With respect to the company
19 under its supervision, it acts, as I just said, it's
20 main role, formal role, is to act as an investor, as
21 a shareholder in those enterprises. It also has
22 certain supervisory functions. One might think of
23 it as a kind of corporate governance regulator with
24 respect to the firms under its supervision. Those
25 are its main roles.

1 BY MR. HUSTON:

2 Q All right. Professor, I have marked and
3 had the court reporter hand you Exhibit 8539 titled,
4 "Irico Display Devices Co. Limited 2007 Annual
5 Report." I believe this is a translation, English
6 translation. Have you seen this document?

7 A Yes, I have.

8 MR. RUSHING: For the record, is this the
9 same document that's attached as Exhibit 2 to the
10 Plunkett declarations?

11 MR. HUSTON: I believe so.

12 BY MR. HUSTON:

13 Q And turning to page 6, this is a table of
14 the top ten shareholders of Irico Display, correct?

15 A Yes, it is.

16 Q And it shows Irico Group Electronics, a
17 state-owned legal person, owning 41.36 percent,
18 correct?

19 A Correct.

20 MR. RUSHING: Sorry, where does it say
21 that? Oh, there it is.

22 BY MR. HUSTON:

23 Q And as we've already discussed, it also
24 shows that no one else has anywhere near that
25 percentage, correct?

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1 MR. RUSHING: Object to the form.

2 THE WITNESS: The next highest percentage
3 that I see on the table is 1.71 percent.

4 BY MR. HUSTON:

5 Q And then after that, it dropped off to
6 below 1 percent, correct?

7 A That's correct.

8 Q And based on that, if you're going by
9 shareholdings, would you say that Irico Electronics
10 controls Irico Display?

11 MR. RUSHING: Object to the form.

12 THE WITNESS: Under standard corporate
13 law governance principles in any country -- unless
14 given this shareholding pattern, Irico Group would
15 be able to elect the entire board of Irico Display.

16 BY MR. HUSTON:

17 Q And based on how it actually happens in
18 reality in China, do you believe that's how it
19 works?

20 MR. RUSHING: Object to the form.

21 THE WITNESS: Yes. These are -- I mean,
22 particularly because these are publically traded
23 companies, as I said earlier, a share carries
24 essentially the same governance characteristics in
25 China as it does in the United States or elsewhere.

1 So yes, I think it would be the same.

2 BY MR. HUSTON:

3 Q And we talked earlier about the Chinese
4 Communist Party and we also talked about SASAC. To
5 what extent do you believe either of those two
6 entities influence voting of shares?

7 MR. RUSHING: Object to the form.

8 THE WITNESS: Could you clarify at what
9 level you're talking about?

10 BY MR. HUSTON:

11 Q At any level.

12 A Well, I think -- okay, I think I have to
13 give you a several part answer. So SASAC is the
14 shareholder, yet in the group-level companies, it's
15 the sole shareholders. So obviously it controls the
16 group-level companies. Beyond that, I have seen no
17 scholarship or evidence that SASAC is directly, or
18 really even indirectly, influencing the voting
19 behavior of shareholders in these enterprises, and I
20 would say the same thing for the communist party.

21 Q How confident are you in your research on
22 that subject?

23 MR. RUSHING: Object to the form.

24 THE WITNESS: Well, what I can say is
25 what I said which is I've seen no scholarship that

1 suggests that SASAC or communist party are
2 influencing the voting behavior of shareholders in
3 China.

4 BY MR. HUSTON:

5 Q Right. No, I understand that. So I
6 guess my question is, you've seen no evidence of it,
7 have you looked, to what extent do you feel
8 comfortable that you've got a firm fix on that
9 topic?

10 MR. RUSHING: Object to the form.

11 THE WITNESS: Well, I think -- let me
12 answer the question this way. All of the research
13 that I've done, all of the scholarship that I've
14 seen, reports SASAC's principle influence over the
15 company's, under its supervision, under its
16 supervision as being its appointments power with
17 respect to the group-level executives.

18 BY MR. HUSTON:

19 Q What is its influence on the
20 appointments?

21 MR. RUSHING: Object to the form.

22 THE WITNESS: Well, SASAC has the
23 authority to appoint senior executives at the
24 group-level companies.

25

1 BY MR. HUSTON:

2 Q If you could turn back to Exhibit 8536.

3 If you turn to page 635 and -- not sure you're on
4 the --

5 A 635.

6 Q You've got it, okay.

7 And you see down at the bottom there in
8 the highlighted portion, it reads:

9 "Third, although Chinese SOEs are
10 legally organized in the corporate form
11 featuring all or most attribute of the
12 separation of ownership and control
13 model, the real control comes from the
14 CCP, or the Party-state."

15 Do you agree with that?

16 MR. RUSHING: Object to the form.

17 THE WITNESS: I would disagree with this
18 characterization. I do agree certainly that Chinese
19 SOEs are legally organized in the corporate form,
20 and I certainly agree that they feature all or most
21 of the attributes of separation of ownership and
22 control and model. I think the statement, the next
23 part of the statement, the real control comes from
24 the CCP or party-state. Is -- it's potentially over
25 broad. You could say that of many organizations in

1 China. The communist party is, I don't think it's a
2 controversial statement to say that the party itself
3 is kind of above the law. And so at some level, all
4 organizations in China are subject to the authority
5 of the communist party. But I think this is -- so I
6 would say that I think this is a little bit
7 overbroad and also I would not equate the communist
8 party necessarily with the party-state as we
9 discussed earlier.

10 BY MR. HUSTON:

11 Q The next sentence reads:

12 "The Party-state controls SOEs through
13 both general requirements on policy
14 compliance and specific powers such as
15 appointing senior executives of SOEs."

16 Do you agree or disagree with that?

17 A Again, I think this is conflating several
18 different things here. I would be more specific.
19 SASAC as a matter of government, as a matter of law
20 and a matter of government organization, it is SASAC
21 that has the appointments power. Now, SASAC does
22 have within it a party committee. The extent to
23 which that committee is actually calling the shots,
24 I could not tell you, but I think that this is
25 improperly eliminating SASAC from the picture. And

1 I would say further, both the general requirements
2 on policy compliance, that's a very general
3 statement -- pardon me. That's a very general
4 statement. I really don't know what that would be
5 referring to.

6 Q So the next highlighted section says:
7 "State and business maybe very close in
8 some other economies with state-owned
9 enterprises, such as Korea, Japan,
10 Singapore or Brazil, but a degree of
11 direct control over state-owned
12 enterprises by an economy's ruling
13 parties is rarely seen in other open
14 economies."

15 You've mentioned that you are a professor
16 of comparative law and that you've looked at some of
17 these other countries. Do you see a difference in
18 how state-owned enterprises run in China versus
19 these other countries mentioned?

20 A The most relevant would be Singapore.
21 Korea and Japan have relatively few SOEs. Singapore
22 uses a holding company model, Temasek -- excuse me.
23 In terms of the size of the capital market under a,
24 at least a sensible government control, Singapore
25 would be similar to China. Singapore has a

1 different governmental structure for -- different
2 ownership structure for its SOES. That's certainly
3 true.

4 Q The next highlighted sentence reads:

5 "... the Party-state in China directly
6 controls not only the personnel but
7 also sometimes the operation of
8 state-owned enterprises, bypassing the
9 legal governance structure consisting
10 of the board of directors and
11 management."

12 Do you agree with that or disagree?

13 MR. RUSHING: Object to the form.

14 THE WITNESS: Again, I -- the party-state
15 directly controls not only the personnel but also
16 sometimes the operation of SOEs. I mean, I can only
17 restate what I've said, which is that SASAC has the
18 authority to appoint personnel in the -- at the
19 group level, not formally the party. The party may
20 be involved in that. I don't know. There is, as I
21 said, a party committee within SASAC. And the party
22 generally is involved in personnel matters. As to
23 the next part of this sentence, also sometimes the
24 operation of SOEs bypassing the governance
25 structure, if this is a statement about what may

1 happen at times, it could be true. It is certainly
2 not the way the system is -- is structured or meant
3 to be operated. Again, I would say if he's
4 referring to the communist party of China, the
5 communist party of China has the ability to go
6 outside the law in any number of areas. The Chinese
7 constitution, for example, provides for freedom of
8 speech. We all know that's not in existence, so to
9 the extent that the communist party has a monopoly
10 on power, does it have the capacity to go outside
11 the corporate law, yes. But I'm not aware that that
12 is kind of -- it's certainly not its formal role,
13 and bringing it to our case in front of us, I did
14 not see evidence of that.

15 BY MR. HUSTON:

16 Q If you can flip over to page 648, the
17 highlighted paragraph starts:

18 "Mechanisms and controls in the legal
19 governance structures stem from the
20 corporate form based on Gongsì Fa and
21 other relevant state laws, and resemble
22 those implemented in other
23 jurisdictions."

24 Gongsì Fa is the company law, correct?

25 A That's correct.

1 Q And then the next sentence reads:

2 "Political governance is a
3 CCP-dominated process that actually
4 controls personnel appointments and
5 decision-making in SOEs."

6 CCP refers to the Communist -- the
7 Chinese Communist Party, correct?

8 A Correct.

9 Q And, you know, we've discussed this
10 already, but I take it, you take issue with that
11 sentence?

12 A In the same way that I did before. It's
13 conceivable that the party is -- can operate through
14 SASAC, but that is certainly not the way the system
15 is structured.

16 Q And then the next sentence says:

17 "The two structures run separately,
18 although the same group of players
19 participates in the decision-making
20 processes of both structures."

21 A Well, I think what this is in reference
22 to is the fact that, as I've explained in some of my
23 scholarship as well and as we alluded to earlier,
24 there is a corporate structure and there is a
25 parallel party committee structure internal to the

1 firm, which stands outside the corporate law. And
2 it is common for senior executives in the company's
3 under SASAC's supervision to wear two hats, a
4 corporate hat and a party hat. I think that's what
5 he's referring to.

6 Q And then the last sentence in this
7 highlighted portion says:

8 "In most cases, the informal, nonlegal,
9 rules in political governance, which
10 run in the shadows, prevail over the
11 legal rules in China's corporate and
12 securities laws."

13 What is your reaction to that answer?

14 MR. RUSHING: Object to the form.

15 MR. HUSTON: Do you agree with that
16 statement?

17 MR. RUSHING: Object to the form.

18 THE WITNESS: Well, you know, scholarship
19 has to be pitched at a certain level of generality,
20 and so as a very general statement, I would say that
21 he's certainly correct that there are these parallel
22 structures. Where he says, "In most cases, the
23 informal, non-legal rules" et cetera "prevail over
24 the legal rules," again, I guess I would take issue
25 to that particularly with respect to publicly these

1 mixed-ownership publicly traded corporations. I
2 don't think that the party has the capacity to just
3 ride rough shot over the formal governance
4 structures, at least not in the ordinary case. I
5 would see no reason why it would do that.

6 And I also, and this is a point I meant
7 to make earlier, these are huge enterprises,
8 publicly listed companies, and it takes obvious
9 skill to manage these companies. How much
10 information does SASAC, sitting in Beijing, or
11 communist party authorities in Beijing, how much
12 capacity do they really have to operate these
13 companies. So again, might it happen from time to
14 time, it's conceivable. Is that the way it
15 routinely operates, I'm skeptical of that.

16 BY MR. HUSTON:

17 Q You mentioned the committee structure or
18 the communist party committee structure within
19 firms. Can you describe what their purpose is?

20 MR. RUSHING: Object to the form.

21 THE WITNESS: I would say their main --
22 well, first, I would say that my scholarship and
23 discussions with people who have direct experience
24 in this suggest that the degree to which these
25 parties are actually functional, varies tremendously

1 really answer that question. I understand what
2 corporate expertise is. I'm not sure I understand
3 what communist party expertise really would mean.
4 And I'm not an expert in, kind of, party ideology
5 and all the rest of that.

6 BY MR. HUSTON:

7 Q Yeah, no. I think you misunderstood my
8 question. My question was, if they've got corporate
9 expertise on the corporate side and they happen to
10 be communist party members, they would still have
11 that corporate expertise as communist party members,
12 correct?

13 MR. RUSHING: Object to the form.

14 THE WITNESS: That seems fair enough.

15 BY MR. HUSTON:

16 Q Looking at this page 652, the paragraph
17 that's highlighted in the middle of the page. It
18 says:

19 "Insofar as corporate governance and
20 control of state-owned enterprises is
21 concerned, a state-owned enterprise is
22 controlled by the Party-state through
23 the following four mechanisms: (1) the
24 fundamental discipline of the Communist
25 Chinese Party requires all Party

1 members to comply with the Party line;
2 (2) the Chinese Communist Party decides
3 the appointment and promotion of the
4 top executives of state-owned
5 enterprises; (3) Party cells within the
6 state-owned enterprises convene
7 meetings to make important decisions
8 for the company and to ensure the
9 operation of the company is consistent
10 with the Party line; and (4)
11 state-owned enterprise executives
12 accused of wrongdoing are investigated
13 by the Chinese Communist Party and
14 punished under Party discipline."

15 Based on what you've testified before, I
16 assume you disagree to some extent with that
17 paragraph?

18 A I would have to take these one by one.
19 As to the first one:

20 "The fundamental discipline of the CCP
21 requires all Party members to comply
22 with the Party line."

23 I mean, I don't really know what that --
24 I'm not sure exactly what that means specifically.

25 Second one:

1 "The CCP decides of the appointment and
2 promotion of the top executives of
3 SOEs."

4 I mean, we discussed this before. That's
5 certainly not the way the formal process functions.
6 It is SASAC who makes those calls.

7 Third one:

8 "Party cells within the SOEs convene
9 meetings to make important decision for
10 the company and to ensure the operation
11 of the company is consistent with the
12 Party line."

13 I frankly disagree with this. What he
14 may be referring to is the current movement under
15 Xi Jinping, which we have already discussed, to
16 tighten in essence the role of the party to lift up,
17 to elevate the role of the party in SOEs.

18 But I would not agree with this statement
19 based particularly with respect to the relevant time
20 period for our case.

21 And the fourth one:

22 "SOE executives accused of wrongdoing
23 are investigated by the CCP and
24 punished under Party discipline."

25 That certainly could be true.

1 Q Let's drill down on number three, which
2 is the party cells within the state-owned
3 enterprises themselves. What do you know about
4 party committees within state-owned enterprises in
5 the 2007 time period? What research have you done
6 or scholarship that would make you knowledgeable on
7 that subject?

8 A I could not speak specifically to the
9 party cells in a given time period -- in the time
10 period of 2007.

11 Q Is it your understanding that in that
12 time period those party committees were responsible
13 for reviewing major corporate decisions within
14 state-owned enterprises?

15 MR. RUSHING: Object to the form.

16 THE WITNESS: There was a doctrine called
17 something like the three majors and one large
18 policy, in which I guess it was sort of a party -- a
19 policy to -- to be involved in certain major
20 decisions of the SOEs.

21 BY MR. HUSTON:

22 Q Where did that three majors and one large
23 policy come from?

24 MR. RUSHING: Object to the form.

25

1 BY MR. HUSTON:

2 Q If you know.

3 A I don't know. I couldn't identify the
4 specific act within the government, or the party for
5 that matter.

6 Q As far as you know, that policy was in
7 place in the 2007 time period, correct?

8 A I don't know that. I'm not confident of
9 that.

10 Q If you can go to page 654 and that first
11 highlighted sentence says that:

12 "The Constitution of the Communist
13 Party of China requires all CCP members
14 to comply with the Party's political
15 line."

16 I think we've discussed this already, but
17 is it fair to say that you don't feel confident
18 opining on that, the truth of that?

19 A That's correct.

20 Q And then the next highlighted portion
21 says:

22 "Given that all or most of the top
23 executives and many other employees at
24 SOEs are CCP members, the obligations
25 imposed upon the Party members listed

1 in the previous paragraph have profound
2 implications in the corporate
3 governance practices of SOEs. The
4 obligations form a general and
5 ideological control on the minds and
6 behaviors of CCP members, who, from CEO
7 to the factory workers, must, at least
8 in theory, implement Party policies and
9 execute Party orders faithfully when
10 performing their duties in a
11 state-owned enterprise."

12 Is it fair to say that you don't feel
13 confident opining on that paragraph as well?

14 MR. RUSHING: Object to the form.

15 THE WITNESS: I feel more confident in
16 saying that this is both a very, very broad
17 generalization, and also if you read the next
18 paragraph, he is referring to the current Xi Jinping
19 administration in which there is no question that
20 there has been an emphasis on tightening party
21 control. So I think this paragraph has to be read
22 in context of the time period, and it is pretty
23 sweeping in its generalization, and it does not
24 comport with my discussions with people about the
25 degree to which communist party ideology is taken

1 seriously in China.

2 BY MR. HUSTON:

3 Q Turn to page 656. The start of the
4 highlighted section reads:

5 "The responsibilities and powers of the
6 Party organization in a state-owned
7 enterprise are more explicitly stated
8 in the 1997 CCP Notice on Party
9 Building in SOEs, which requires the
10 Party organization to supervise the
11 enterprise in order to ensure that the
12 CCP line is faithfully implemented, and
13 authorizes it to 'participate in the
14 decision-making on material and
15 important matters of the SOE and
16 provide support to the factory
17 leader/general manager, shareholders'
18 general meeting, board of directors and
19 supervisory board to perform their
20 duties according to law.'"

21 Is that 1997 Communist Party Notice
22 something that you're familiar with?

23 A No, it's not.

24 Q Next sentence reads:

25 "Accordingly, the board of directors or

1 MR. RUSHING: Objection to the form.

2 THE WITNESS: Well, I would say "yes" to
3 the extent that, again, just thinking about what
4 corporate groups work in any system of corporate
5 governance, I don't think controlling shareholders
6 typically are involved in day-to-day control of
7 their downstream subsidiaries. And I also take
8 issue with the fact that controlled by Irico Group
9 necessarily means -- assuming day-to-day control of
10 Irico Group, which I find hard to believe, I don't
11 see them as step-to day-to-day control by the
12 Chinese government in all these different
13 dimensions. Seems like an extraordinarily broad
14 statement.

15 THE REPORTER: It's going to be 8540.
16 (Exhibit 8540 marked for identification.)

17 THE WITNESS: Thank you.

18 BY MR. HUSTON:

19 Q Professor, the court reporter has handed
20 you what we marked as Exhibit 8540 entitled,
21 "Missing Link: Corporate Governance in China's
22 State Sector." Do you recognize this document?

23 A I do.

24 Q How do you recognize it?

25 A I have read it and I cited it in my

1 report.

2 Q What is it?

3 A It's a report that was commissioned by
4 the Asia Society. Dan Rosen, the Rhodium Group, is
5 an organization that collects data on Chinese
6 investment, primarily.

7 Q And you mentioned that you cited it in
8 your articles?

9 A I cited it in the declaration itself.

10 Q Oh, I see.

11 What did you rely on this for?

12 A If you look at footnote 4, it's cited
13 simply for the statistic that 36 percent of market
14 capitalization of the Asia market is comprised of
15 companies whose ultimate controller is SASAC.

16 Q How reliable is this entity, the Asia
17 Society?

18 A Well, the Asia Society is not responsible
19 for the content of the report. I would assume that
20 Dan Rosen, whom I know who is the head, the
21 principal of the Rhodium Group, did most of the work
22 on this, at least with respect to the data in this
23 report, which is how I'm using it. Rhodium Group is
24 a very well-known organization that collects data on
25 Chinese investment in the United States.

1 Q And is Dan Rosen well-respected?

2 A I believe so.

3 Q Turn to page 29 of this report. The
4 highlighted section reads:

5 "For state-owned enterprises' listed
6 subsidiaries, on paper the general
7 shareholder meeting appoints all
8 directors. In practice, however,
9 appointments of executive directors are
10 usually pre-determined by the largest
11 shareholders--the Party state (SASAC
12 and Central Organization Department).
13 There is significant overlap between
14 listed subsidiaries' executive
15 directors and other managers and those
16 of the group company, thereby
17 constituting a potential channel for
18 Party state influence on
19 decision-making in listed subsidiaries.
20 Even formally 'independent' directors
21 typically have ties to executive
22 directors or the government, limiting
23 actual independence and leaving
24 minority shareholders vulnerable to
25 decisions that may jeopardize their

1 interests."

2 Do you agree with that paragraph?

3 MR. RUSHING: Object to the form.

4 THE WITNESS: Again, I would need to take
5 this apart. It's hard to say agree or disagree with
6 several sentences that are saying a variety of
7 different things.)

8 As we've already gone over, it is
9 certainly true that SASAC has appointments power
10 with respect to the senior executives in the
11 group-level firms. It's certainly true that there
12 is "overlap between listed subsidiaries' executive
13 directors" and those in the group company. That's
14 standard practice in any corporate group anywhere in
15 the world.

16 "Constituting a potential channel for
17 Party state influence on decision-making in listed
18 subsidiaries," well, is there potential for party
19 influence here, that would be true regardless of
20 this appointments power.

21 "Even formally 'independent' directors
22 typically have ties to executive directors or the
23 government," I have no basis for evaluating that --
24 the accuracy of that statement.

25 "Leaving minority shareholders vulnerable

1 to decisions that may jeopardize their interests,"
2 well, again, in any corporate governance system,
3 minority shareholders are vulnerable to decisions
4 that may jeopardize their interests by the
5 controller. That is absolutely not unique to China,
6 and I don't see how party or SASAC or government
7 even really factors into that. It's a fact of life
8 as a minority shareholder in a controlled corporate
9 group, certainly true of Korean shareholders, U.S.
10 shareholders as well.

11 BY MR. HUSTON:

12 Q And the beginning part of this passage
13 indicates that there is a difference between what
14 powers on paper and how they are -- how they play
15 out in practice. Do you have any understanding of
16 what he's getting at in that passage?

17 MR. RUSHING: Object to the form.

18 THE WITNESS: Could you rephrase the
19 question? I'm not sure exactly what you're pointing
20 to.

21 BY MR. HUSTON:

22 Q The first sentence says:

23 "For SOEs' listed subsidiaries, on
24 paper the general shareholder meeting
25 appoints all directors, but in

1 practice, appointments of executive
2 directors are usually pre-determined by
3 the largest shareholder--the Party
4 state (SASAC and the Central
5 Organization Department)."

6 A Well, the phrasing of this --

7 MR. RUSHING: Object to the form.

8 THE WITNESS: I'm sorry. I mean, the
9 phrasing of this, sure, this is put in the context
10 of Chinese organizations, but you could say the same
11 statement about any listed subsidiary of a
12 controlled group anywhere in the world. I mean, the
13 shareholders formally have the power to elect the
14 board. Even in the United States, I mean, the
15 average shareholder has no power to elect a board
16 member. So if you were to say that they're
17 predetermined, well that's true -- you can say
18 that's true of boards in the United States as well.
19 So as a very general statement about how corporate
20 governance systems work everywhere in the world,
21 this seems basically unobjectionable.

22 BY MR. HUSTON:

23 Q So you don't object to the notion that
24 SASAC and the Central Organization Department
25 generally have the power to appoint executive

1 directors at state-owned enterprises' listed
2 subsidiaries?

3 MR. RUSHING: Object to the form.

4 THE WITNESS: Operating through corporate
5 channels, yes. And that's what we see in this very
6 case. I saw no evidence that SASAC or the party
7 were leap-frogging over multiple layers of
8 enterprises and dictating who would serve on the
9 board. This seemed all very routine to me in terms
10 of how a corporate group would operate.

11 BY MR. HUSTON:

12 Q So they are operating within the
13 channels, the normal channels?

14 A Yes.

15 Q If you turn to the next page, page 30.

16 Under the heading, "Party Committee," it says:

17 "In practice, the work of the
18 State-Owned Enterprise Party committees
19 primarily involves personnel and
20 political affairs. Party committees
21 nominate, approve, and assess senior
22 personnel within the firm, assist
23 selected employees to join the CCP,
24 disseminate political propaganda, and
25 organize study sessions for Party

1 members about central-level policies,
2 key campaigns, and speeches by top
3 leaders like Xi Jinping."

4 Do you have any quarrel with anything in
5 that passage?

6 MR. RUSHING: Object to the form.

7 THE WITNESS: Again, I would like to take
8 it sentence by sentence.

9 BY MR. HUSTON:

10 Q Sure.

11 A "In practice, the work of SOE Party
12 committees primarily involves personnel and
13 political affairs." That seems accurate to me.

14 "Party committees nominate, approve, and
15 assess senior personnel within the firm." Here, I
16 think I would disagree a little bit. I mean, again,
17 people wear two hats. They wear a corporate hat and
18 a party hat. If you're wearing two hats, it's hard
19 to separate out how nominations -- you know, to say
20 the party is doing the nomination, approving, and
21 assessing, et cetera, as opposed -- it's in many
22 cases the same people that we're talking about.
23 They are wearing two hats. So I think that's a
24 better way to understand what is happening here.

25 It's not as if the party is somehow dictating who is

1 going to be serving in a corporate capacity.

2 Do they disseminate political propaganda?

3 I didn't see that in this case. I saw it in the

4 drywall case. So beyond that, I wouldn't be able to

5 comment.

6 Q And obviously, this passage refers to

7 present day because it's talking about Xi Jinping.

8 Is it your understanding that what is described

9 here, as you just redescribed it, was the case back

10 in the 2007 time period?

11 MR. RUSHING: Object to the form.

12 THE WITNESS: I couldn't speak definitely

13 to that time period. It predates my study.

14 BY MR. HUSTON:

15 Q Okay. Thanks. And then the next

16 highlighted section says:

17 "While the Party committee cannot

18 supercede the board of directors, it

19 can nevertheless influence the board's

20 work through its agenda-setting power.

21 This agenda-setting power derives from

22 the Party committee's authority to

23 discuss major decisions of the firm

24 before they go to the board of

25 directors for final determination."

1 Does that square with your understanding
2 of how the internal party committees work at
3 state-owned enterprises?

4 MR. RUSHING: Object to the form.

5 THE WITNESS: Again, I think we have to
6 be very careful about the time period here because
7 he's talking about the present day. And again, as
8 we've discussed repeatedly, the formal role of the
9 party has been elevated under Xi Jinping. So I know
10 it goes onto say this is the informal practice,
11 but...

12 BY MR. HUSTON:

13 Q It actually goes on to say, "This has
14 long been the informal practice."

15 A The informal practice, but I have no
16 basis for determining how widespread this practice
17 was, et cetera.

18 Q No basis to determine that one way or the
19 other, correct?

20 MR. RUSHING: Object to the form.

21 THE WITNESS: Could you restate the
22 question?

23 BY MR. HUSTON:

24 Q Yes, yes. So let's just get that
25 sentence out on the table because we both referred

1 to it. The next sentence says:

2 "This has long been the informal
3 practice within state-owned enterprises
4 and originated in the 'three majors,
5 one large' concept first proposed
6 during the Jiang Zemin administration."

7 And we've already referred to the three
8 majors, one large concept.

9 And my question is, you don't have a
10 basis one way or the other to determine what was
11 going on with party committees within state-owned
12 enterprises during that time period, correct?

13 MR. RUSHING: Object to the form.

14 MR. HUSTON: With respect to their
15 involvement in these major decisions, I have no
16 basis for affirming or disputing that.

17 BY MR. HUSTON:

18 Q Okay. As far as you know, though,
19 this -- actually, strike that.

20 So the next sentence -- or yeah, the next
21 sentence kind of describes the three majors, one
22 large concept. And does that description look
23 accurate to you?

24 MR. RUSHING: Object to the form.

25

1 BY MR. HUSTON:

2 Q And just to make it clear, it says:

3 "This concept calls for the Party

4 committee to play a role in state-owned

5 enterprise decision-making when it

6 touches on macro-level controls,

7 national strategy, or national security

8 ('three majors')--or if it involves any

9 operational and managerial affairs that

10 are large or important in scope ('one

11 large')."

12 MR. RUSHING: Object to the form.

13 THE WITNESS: And the question is?

14 BY MR. HUSTON:

15 Q The question is, is that description of

16 the three majors, one large concept square with your

17 understanding of that concept?

18 A I have seen it described elsewhere in

19 similar fashion.

20 Q And as far as you know, that concept was

21 in place in 2007?

22 MR. RUSHING: Object to the form of the

23 question.

24 THE WITNESS: Well, as it says here, it

25 may have been an informal practice. Several lines

1 up, it refers to this as an informal practice.

2 BY MR. HUSTON:

3 Q And then it says:

4 "While state-owned entity Party

5 committees themselves have some

6 discretion to determine specifically

7 what qualifies as 'major decisions,' a

8 2004 Party notice provides examples

9 including enterprise strategy, medium-

10 and long-term development plans, annual

11 budgets, major decisions concerning

12 enterprise asset restructuring and

13 capital management, major personnel

14 affairs, and the creation or adjustment

15 of internal departments."

16 Did you have an understanding -- do you

17 have an understanding of what constituted a major

18 decision under this three majors, one large concept

19 back in 2007?

20 MR. RUSHING: Object to the form.

21 THE WITNESS: No. As I mentioned

22 earlier, I'm not familiar with this 2004 party

23 notice, so I couldn't speak specifically to that.

24 BY MR. HUSTON:

25 Q What is the function of party notices, if

1 you know?

2 A I mean, I could only go by the formal
3 title of Notice. It doesn't sound particularly
4 authoritative to me, but I can't speak further to
5 that.

6 Q Just a couple more questions, and I think
7 we will break for lunch.

8 Go to page 41, the highlighted section.
9 The first sentence says:

10 "A common theme throughout the past
11 four decades of corporate governance
12 development in China's state sector is
13 the discrepancy between form and
14 function."

15 I'm not going to read the rest of the
16 paragraph. Take whatever time if you want to read
17 it, but my only question is, really, whether in your
18 studies of Chinese governance, whether you see a
19 discrepancy between form and function?

20 MR. RUSHING: Object to the form of the
21 question.

22 THE WITNESS: Let me take a moment to
23 read that.

24 MR. HUSTON: Yeah.

25 THE WITNESS: Okay. I'm sorry, I forgot

1 your question.

2 BY MR. HUSTON:

3 Q Yeah, the question was, based on your
4 scholarship to the extent it touches on this at all,
5 and you can tell me if it doesn't, whether you see
6 any discrepancy between form and function as a theme
7 when looking at corporate governance in China.

8 MR. RUSHING: Objection to the form.

9 THE WITNESS: Well, I'm not sure. I
10 think I understand what form means and function.
11 I'm a little unclear on what she means by function
12 here. I would say as a general matter in corporate
13 governance studies, generally, is a gap between what
14 is typically referred to as "law in the books"
15 versus "what happens in practice" is very prevalent;
16 it's very common everywhere. So if that's what is
17 being referred to here, then I would say it's not
18 surprising that there is some daylight between that.
19 You know, it goes on to talk about how China
20 developed very rapidly and so on -- so a lack of
21 appetite. I don't really have a basis for
22 evaluating the rest of this sentence -- or the rest
23 of this paragraph honestly.

24 BY MR. HUSTON:

25 Q Fair enough. Flipping over to the next

1 page, which is page 22. The highlighted section
2 says:

3 "Although analysts often focus on
4 listed subsidiaries' corporate
5 governance" --

6 A I'm sorry, I think --

7 Q It's -- yeah, it's the second --

8 A Oh, I see it. It's not a highlighted
9 passage.

10 Q Oh, I'm sorry. I apologize.

11 A I got it.

12 Q So the second sentence, top of the page
13 says:

14 "Although analysts often focus on
15 listed subsidiaries' corporate
16 governance, due to immediate commercial
17 interests and better data availability,
18 the locus decision-making in Chinese
19 state-owned enterprises ultimately
20 resides at the group company level."

21 Do you agree or disagree with that?

22 MR. RUSHING: Object to the form.

23 THE WITNESS: I would say, again, this
24 is -- what they're describing seems to me to be a
25 fact in virtually any group structure, corporate

1 governance structure around the world. I don't see
2 anything unique to China with respect to this.

3 BY MR. HUSTON:

4 Q Okay. So in a U.S. corporation, major
5 corporation, that's got multiple subsidiaries, would
6 it be your view that the locus of power would be at
7 the parent company necessarily or at the subsidiary
8 level?

9 MR. RUSHING: Object to the form.

10 THE WITNESS: In the United States, it
11 would typically be at the parent company level.

12 BY MR. HUSTON:

13 Q Okay. And you don't see any difference
14 between China in that regard and the United States?

15 MR. RUSHING: Object to the form.

16 THE WITNESS: Well, of course, there are
17 differences. Every corporate governance system has
18 its distinctive characteristics. The locus of power
19 being at the group level or the holding company
20 level, the parent company level, is common to all
21 corporate governance systems.

22 BY MR. HUSTON:

23 Q Okay. Any notion why that sentence would
24 be included in here if it's just common, regardless
25 of which jurisdiction you're in?

1 MR. RUSHING: Object to the form.

2 THE WITNESS: Well, actually, I'm glad

3 you asked the question because I think that in

4 any -- in describing any system of corporate

5 governance that is foreign to the reader, there is a

6 balance between describing things in a way that is

7 understandable and recognizable to readers and also

8 introducing distinctive elements. So a lot of this

9 is standard, as I've been emphasizing, kind of

10 standard behavior anywhere, and at the same, the

11 author sprinkles in, you know, those distinctive

12 characteristics. And it isn't always clear when the

13 author is sprinkling in distinctive characteristics

14 and when they're describing kind of corporate

15 governance norms anywhere.

16 BY MR. HUSTON:

17 Q From your perspective, this is just a

18 normal corporate governance concept?

19 MR. RUSHING: Object to the form.

20 THE WITNESS: Well, I think what they're

21 saying -- specifically saying, although analysts

22 often focus on listed subsidiaries' corporate

23 governance and better data availability, that's

24 really true anywhere. Listed subsidiaries or listed

25 firms tend to be the focus of corporate governance

1 scholarship because that's where you can get the
2 information. I think all they're saying here is the
3 group company is -- has the senior executives that
4 are, to some extent, populating these downstream
5 subsidiaries. Those are the key decision-makers in
6 the firm. I mean, with respect to these downstream
7 companies.

8 BY MR. HUSTON:

9 Q And then the next highlighted section
10 says:

11 "Finally, this historical overview
12 reveals that greater SOE autonomy from
13 the state has always come with some
14 degree of Party participation in SOE
15 governance. As SOEs have transformed
16 from production units in the planned
17 economy to partially privatized
18 multinationals today, the Party has
19 always been present."

20 Do you have any quarrel with that
21 passage?

22 MR. RUSHING: Object to the form of the
23 question.

24 THE WITNESS: I mean, the party -- the
25 party has always been present, I mean, it's hard to

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1 argue with that characterization. These are
2 partially privatized entities. No quarrel with
3 that.

4 MR. HUSTON: Why don't we break for
5 lunch.

6 (Lunch recess taken.)

7 BY MR. HUSTON:

8 Q All right. We're back on the record
9 after lunch. Professor Milhaupt, you're still under
10 oath. Do you understand that?

11 A I do.

12 MR. HUSTON: Let's mark the next one.

13 THE REPORTER: It's going to be 8541.

14 (Exhibit 8541 marked for identification.)

15 BY MR. RUSHING:

16 Q All right, Professor, I have had the
17 court reporter mark as the Exhibit 8541 an article
18 entitled, "We are the (National) Champions:
19 Understanding the Mechanisms of State Capitalism in
20 China."

21 Do you recognize this?

22 A I certainly do.

23 Q This is an article that you co-wrote with
24 Li-Wen Lin, correct?

25 A Correct.

April 24, 2019

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1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were duly sworn; that a record
8 of the proceedings was made by me using machine
9 shorthand, which was thereafter transcribed under my
10 direction; further, that the foregoing is a true
11 record of the testimony given.

12 I further certify I am neither financially
13 interested in the action nor a relative or employee
14 of any attorney or party to this action.

15 IN WITNESS WHEREOF, I have this April 29,
16 2019 subscribed my name.

17
18
19
20


21 _____
22 ASHLEY SOEVYN
23 CSR No. 12019
24
25